

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Jurisdictional)	CC Docket No. 80-286
Separations Seeks Comment on)	ET Docket No. 04-295
Communications Assistance for Law)	
Enforcement Act (CALEA) Issues)	

**JOINT COMMENTS OF
THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION
AND
THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF
SMALL TELECOMMUNICATIONS COMPANIES**

The National Telecommunications Cooperative Association (“NTCA”)¹ and the Organization for the Promotion and Advancement of Small Telecommunications Companies (“OPASTCO”)² (collectively, “Associations”) hereby file these Joint Comments on the above-referenced matter.³

¹ NTCA is an industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA’s members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a “rural telephone company” as defined in the Communications Act of 1934, as amended (Act). NTCA’s members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities.

² OPASTCO is a national trade association representing over 560 small ILECs serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve more than 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37). OPASTCO members offer a wide array of communications services to rural consumers in addition to the traditional telephone services they provide as ILECs. These include dial-up Internet access, high-speed and advanced services, mobile wireless services, competitive local exchange service, long distance resale, and video services.

³ See, Federal-State Joint Board on Jurisdictional Separations Seeks Comment on Communications Assistance for Law Enforcement Act (CALEA) Issues, *Public Notice*, CC Docket No. 80-286, ET Docket No. 04-295, DA 05-535 (released March 2, 2005).

I. INTRODUCTION

The Federal-State Joint Board on Jurisdictional Separations (“Joint Board”) requests public comment concerning jurisdictional separations issues related to the Communications Assistance for Law Enforcement Act (“CALEA”), pursuant to a referral from the Federal Communications Commission. Among other things, the Joint Board questions what equipment, investments, and other costs should be considered to be related to CALEA compliance and what is the appropriate jurisdictional separation of CALEA-related costs and revenues.

II. ALL CALEA-RELATED COSTS SHOULD BE ASSIGNED TO THE INTERSTATE JURISDICTION

The cost of CALEA compliance has been disproportionately high for many of the rural ILECs that make up the Associations’ memberships.⁴ While the Federal Bureau of Investigation (FBI) provided funding to some manufacturers to develop the CALEA software solution, a savings that was purportedly passed on to the carriers, the manufacturers required that the carriers purchase an expensive generic upgrade for their switches in order to deploy the CALEA solution. Even though carriers were afforded the opportunity to utilize the FBI’s Flexible Deployment Plan to incorporate the deployment of CALEA into their normal generic upgrade cycles, the process was cumbersome and not always approved. In such cases, the carrier had no service-related reason for purchasing the generic upgrade and would not have purchased the additional features if not for the CALEA mandate. Therefore, generic upgrades that rural ILECs make for no

⁴ See, NTCA Comments in Response to the Notice of Proposed Rulemaking and the Initial Regulatory Flexibility Analysis, *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865 (filed Nov. 8, 2004).

other reason than to become compliant with the CALEA mandate should be considered related to CALEA compliance.

The Joint Board requests comment on three alternative proposals for separations treatment of CALEA-related costs. The Associations support the first alternative, direct assignment to the Federal jurisdiction. The requirement that carriers be CALEA compliant comes from federal law and is driven in part by national security initiatives. That alone justifies direct assignment to the interstate jurisdiction. Additionally, there is evidence that rural ILECs are receiving few CALEA-related requests from state and local law enforcement agencies.⁵

Direct assignment to the Federal jurisdiction is also simple and efficient. There is no compelling reason to force rural carriers to go through the lengthy, burdensome and costly process of separating their costs between the intrastate and interstate jurisdictions on the basis of relative-use or fixed factors. Furthermore, direct assignment is more consistent with regulatory parity. Voice Over Internet Protocol and cable voice service providers subject to CALEA's mandates are free of the obligation to perform costly jurisdictional studies.

⁵ See, Comments of GVNW Consulting, Inc., CC Docket No. 80-286, ET Docket No. 04-295 (fil. April 1, 2005).

III. CONCLUSION

The Associations submit that rural ILECs must be permitted to recover all CALEA-related costs. Those costs should be directly assigned to the interstate jurisdiction because they arise from a federal mandate.

Respectfully submitted,

**NATIONAL TELECOMMUNICATIONS
COOPERATIVE ASSOCIATION**

By: /s/ L. Marie Guillory

L. Marie Guillory
Vice President, Legal and Industry

Jill Canfield
Senior Regulatory Counsel

Its Attorneys
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203
(703) 351-2000

**ORGANIZATION FOR THE PROMOTION
AND ADVANCEMENT OF SMALL
TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff

Stuart Polikoff
Director of Government Relations

21 Dupont Circle, N.W., Suite 700
Washington, DC 20036
(202) 659-5990